



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JUL 08 2008

Uniform Issue List Number: 72.20-00, 72.20-04

XXXX  
XXXX  
XXXX

*TEMP: RAITZ*

Legend:

Taxpayer A = XXXX

IRA X = XXXX

IRA Y = XXXX

Custodian B = XXXX

Individual C = XXXX

Custodian D = XXXX

Individual E = XXXX

Custodian F = XXXX

Individual G = XXXX

Amount 1 = XXXX

Date 1 = XXXX

Date 2 = XXXX

Year 1 = XXXX

Year 4 = XXXX

Year 5 = XXXX

Year 6 = XXXX

Dear XXXX :

This is in response to your letter dated May 10, 2007, as supplemented by correspondence dated January 15 and February 21, and May 30, 2008, submitted on your behalf by your authorized representative, requesting a ruling as to whether failure to receive certain distributions from your individual retirement arrangement (IRA) in Year 5 and the subsequent corrective distribution in Year 6 will not result in a modification to a series of substantially equal periodic payments under section 72(t)(4) of the Internal Revenue Code ("Code"), and therefore will not be subject to the additional 10 percent tax imposed on early distributions under section 72(t) of the Code.

The following facts and representations are made under penalties of perjury in support of your ruling request.

In Year 1, Taxpayer A, under age 59  $\frac{1}{2}$ , owned IRA X, a traditional IRA maintained by Custodian B, and began receiving distributions from IRA X in the form of a series of substantially equal periodic payments intended to comply with section 72(t)(2)(A)(iv) of the Code. The payments were calculated using the fixed amortization method, and Taxpayer A received Amount 1 on a monthly basis through December of Year 4.

In January of Year 5, Taxpayer A informed Individual C, a financial advisor employed by Custodian B, that he intended to transfer the IRA to Custodian D. In February of Year 5, IRA X was transferred to IRA Y, a traditional IRA, maintained by Custodian D. On Date 1, Taxpayer A completed an IRA withdrawal request with respect to IRA Y. No IRA payment was made from IRA X for January of Year 5 and no IRA payment was made from either IRA X or IRA Y for February of Year 5. Monthly IRA payments equal to Amount 1 were made from IRA Y starting in March of Year 5. It is represented that Taxpayer A informed Individual E, a financial advisor employed by Custodian D, that the payments for January and February had not been made and that Individual E informed Taxpayer A that the payments would be made as soon as the accounts were properly set up. During Year 5, Custodian D was purchased by Custodian F, and Individual G replaced Individual E as the financial advisor assigned to manage Taxpayer A's accounts, including IRA Y. The monthly statements provided to Taxpayer A by Custodian F did not reflect account activity prior to the acquisition of Custodian D by Custodian F, making it difficult for Taxpayer A to determine whether the required distributions had been made.

In January of Year 6, Taxpayer A became aware that the IRA payments for January and February of Year 5 had not been made by the end of the Year 5 calendar year. At Taxpayer A's request, on Date 2, Custodian F distributed from IRA Y to Taxpayer A an amount equal to the missed payments for Year 5. As a result, instead of receiving an amount equal to 12 times Amount 1 in each year, as required under the fixed amortization method, Taxpayer A received an amount

equal to 10 times Amount 1 in Year 5 and an amount equal to 14 times Amount 1 in Year 6.

Based on the foregoing, you request a ruling that the missed distributions and the subsequent corrective distribution from IRA Y will not be considered a modification under section 72(t)(4) of the Code to the series of substantially equal periodic payments and will not result in the imposition of the 10 percent additional tax on premature distributions under section 72(t)(1) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d)(1), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 72 of the Code provides rules for determining how amounts received as annuities, endowments, or life insurance contracts and distributions from qualified plans are to be taxed.

Section 72(t)(1) of the Code provides for the imposition of an additional 10 percent tax on early distributions from qualified plans, including IRAs. The additional tax is imposed on that portion of the distribution that is includible in gross income.

Section 72(t)(2)(A)(iv) of the Code provides that section 72(t)(1) of the Code shall not apply to distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10 percent tax by section 72(t)(2)(A)(iv) of the Code that, if the series of payments is subsequently modified (other than by reason of death or disability) before the later of (A) the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59  $\frac{1}{2}$  or, (B) the employee's attainment of age 59  $\frac{1}{2}$ , then the taxpayer's tax for the first taxable year in which such modification occurs shall be increased by an amount determined under regulations, equal to the tax that would have been imposed except for the section 72(t)(2)(A)(iv) exception, plus interest for the deferral period.

Notice 89-25, 1989-1 C.B. 662, provides guidance with respect to, among other things, the exception to the tax on premature distributions provided under section 72(t)(2)(a)(iv) of the Code. Q & A-12 of Notice 89-25 provides three methods for determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv) of the Code.

Revenue Ruling 2002-62, 2002-42 I.R.B. 710, modified Q&A-12 of Notice 89-25. Revenue Ruling 2002-62 provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method.

The fixed amortization method provides that the annual payment for each year is determined by amortizing in level amounts the account balance over a specified number of years determined using the chosen life expectancy table and the chosen interest rate. Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payment are determined once for the first distribution year and the annual payment is the same amount in each succeeding year.

In this case, Taxpayer A began receiving payments from IRA X in Year 1 in a series of monthly substantially equal periodic payments as described in Code section 72(t)(2)(A)(iv) using the fixed amortization method as described in Notice 89-25 and Revenue Ruling 2002-62. Taxpayer A's monthly payment was determined in the first distribution year, and remained the same in each succeeding year. Taxpayer A has submitted documentation showing that, during Year 5, he requested that Custodian D distribute the payments that were overdue. If such payments of Amount 1 had been distributed from IRA Y according to Taxpayer A's instructions, Taxpayer A would have received in Year 5 a distribution amount which was determined through application of the same calculation method which had been used to determine the amount of distribution per month from the IRA since the distributions began. The missed distributions were not made by Custodian D, as Individual E had indicated that they would be. When the error was discovered by Taxpayer A, a corrective distribution was immediately made to Taxpayer A on Date 2.

Documentation submitted by Taxpayer A shows that he provided proper and timely notice to an appropriate representative of the financial institution responsible for overseeing the distribution process and for ensuring that the annual amount be distributed from IRA Y for Year 5. Taxpayer A did not intend to modify the series of substantially equal periodic payments he had been receiving from his IRA. Rather, the modification is due to the failure of Custodian D to make the required distribution as requested, which resulted in Taxpayer A receiving an annual payment for Year 5 that is less than the amount determined under the fixed annuitization method. Further, when Custodian F made the corrective distribution in Year 6, this distribution, when added to Taxpayer A's previously calculated annual payment resulted in Taxpayer A receiving an amount for Year 6 that was more than the annual payment determined under the fixed annuitization method. Other than the amount of the annual payments for Years 5 and 6, Taxpayer A will continue to use the fixed annuitization method for calculating the annual payments from IRA Y.



Accordingly, we conclude that the failure to distribute the entire required annual payment from IRA Y for Year 5 and the subsequent corrective distribution made in the following calendar year will not be considered a modification of a series of substantially equal periodic payments under section 72(t)(2)(A)(iv) of the Code and, therefore IRA Y will not be subject to the 10 percent additional tax imposed on premature distributions under section 72(t)(1) of the Code.

This ruling does not express an opinion as to whether (but assumes that) the series of substantially equal periodic payments Taxpayer A is currently receiving from IRA Y satisfies Code section 72(t)(2)(A)(iv) and Revenue Ruling 2002-62.

This ruling assumes that IRA X and IRA Y met the requirements of Code section 408(a) at all times relevant to this transaction.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter ruling may not be used or cited by others as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any question regarding this ruling, please contact XXXX, ID Number XXXX, SE:T:EP:RA:T4 at ( ) . XXXX .

Sincerely

*Donzell H. Littlejohn*

Donzell H. Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: XXXX  
XXXX  
XXXX  
XXXX